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Attorneys for movant, HSBC BANK USA, N. A., AS TRUSTEE FOR THE HOLDERS OF
DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, SERIES 2007-AR3
MORTGAGE PASS-THROUGH CERTIFICATES, its assignees and/or successors in interest

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: Abdul Ghafar and Fauzia Fazal Ghafar	Bk. No. 09-40678-RJN R.S. No.: JJD-658 Judge Randall J. Newsome Chapter 13
Debtor(s).	<i>MOTION FOR RELIEF FROM AUTOMATIC STAY</i>
	Preliminary Hearing: Date: October 20, 2010 Time: 10:30 am Place: U.S. Bankruptcy Court 1300 Clay St. Oakland, CA 94612 Courtroom 220

I. Introduction

MOTION FOR RELIEF FROM STAY

1 COMES NOW, HSBC BANK USA, N. A., AS TRUSTEE FOR THE HOLDERS OF
2 DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST, SERIES 2007-AR3
3 MORTGAGE PASS-THROUGH CERTIFICATES, its assignees and/or successors in interest
4 (“Movant”) and moves this court for an order under 11 U.S.C. §362 terminating the automatic
5 stay, allowing Movant to proceed with and complete any and all contractual and/or statutory
6 remedies incident to its security interests held in real property commonly described as **8777**
7 **WEST MAULE AVENUE #2154, LAS VEGAS, NV 89148** (“Property”) and legally described
8 in the Deed of Trust. Movant further seeks relief in order to, at its option, offer, provide and
9 enter into any potential forbearance agreement, loan modification, refinance agreement or other
10 loan workouts/loss mitigation agreement and to contact the Debtors via telephone or written
11 correspondence to offer such an agreement, which shall be non-recourse unless included in a
12 reaffirmation agreement. Movant further moves that, absent objection, the provisions of
13 F.R.B.P. 4001(a)(3) be waived to avoid further deterioration of Movant’s secured position.
14

15 **II. Parties in Interest**

16 On or about December 15, 2006, Abdul Ghafar and Fauzia Fazal Ghafar, executed and
17 delivered a note in the original principal amount of \$220,900.00. The indebtedness under the
18 Note is secured by a first Deed of Trust recorded against the Property (“Deed” hereinafter).
19 Movant is the beneficiary under the Deed of Trust.
20

21 Abdul Ghafar and Fauzia Fazal Ghafar (“Debtors” collectively hereafter) filed for
22 protection under Chapter 13 of Title 11 of the United States Code on January 30, 2009.
23

24 Martha G. Bronitsky is the duly appointed Chapter 13 Trustee in the case.
25

26 **III. Post-Petition Default and Estimate of Obligation**
27

28 As of the date of this motion, the Debtors have accumulated the following post-petition
defaults:

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1	16 Payments from June 1, 2009 to September 1, 2010 @ \$1,525.71 each	\$24,411.36
2	Attorney Fees & Costs	\$800.00
3	Total Post Petition Due	\$25,211.36

5 The approximate amount owed under the terms of the note is as follows:

6	Principal Balance	\$215,781.50
7	Total Post-Petition Due	\$25,211.36
8	Approximate Total Due	\$240,992.86

10
11 These figures are an estimate only and are subject to change as additional fees are
12 incurred and payments are made or become due, including but not limited to the attorney fees and
13 costs incurred as a result of the filing of this motion. Please contact Movant's counsel directly
14 for a reinstatement quote.
15

16 IV. Authority

17 Under 11 U.S.C. §362(d)(1), on request of a party of interest, the Court shall terminate,
18 annul, modify or condition the stay for "cause". Significant default under the terms of a Chapter
19 13 Plan is "cause" sufficient to terminate the automatic stay. See In re Ellis, 60 B.R. 432 (9th
20 Cir. BAP 1985). In this case, Debtors have failed to make 16 post-petition monthly payments to
21 Movant as prescribed and is thus in default under the terms of the Chapter 13 Plan. Therefore,
22 "cause" exists to terminate the automatic stay.
23

24 WHEREFORE, Movant prays that this Court issue an Order granting the following:

25 1. Terminating or modifying the stay, as to the Debtors and Debtors' bankruptcy estate,
26 allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy
27 law to enforce its remedies to foreclose upon and obtain possession of the Property;
28

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1 2. Alternatively, in the event this court declines to grant Movant the relief requested above,
2 Movant requests that an Order for adequate protection be issued pursuant to 11 U.S.C. § 361,
3 including a requirement that Debtors reinstate all past arrearages and immediately commence
4 regular monthly payments;

5 3. That the Order be binding and effective despite any conversion of this bankruptcy case to
6 a case under any other chapter of Title 11 of the United States Code;

7 4. That the fourteen (14) day stay under Bankruptcy Rule 4001(a)(3) be waived;

8 5. That any fees and costs incurred in the prosecution of this motion may be assessed
9 consistent with the terms of the underlying Note and Deed of Trust; and

10 6. For such other relief as the Court deems proper.

11
12 Date: September 27, 2010

13 Respectfully submitted,
14 ROUTH CRABTREE OLSEN, P.S.

15 By: /s/ Jonathan J Damen
16 Jonathan J Damen, ESQ.
17 Attorneys for Movant